

Unofficial Draft Copy

As of: November 30, 2004 (8:27am)

LC5002

**** Bill No. ****

Introduced By *****

By Request of the *****

1 A Bill for an Act entitled: "An Act providing that an insurer of
2 medical malpractice liability need not pay and may not be ordered
3 by a court to pay any type of damages, including but not limited
4 to medical expenses and lost wages, prior to a final settlement
5 or a judgment when liability for the act or omission and
6 liability for the damages are reasonably clear; amending sections
7 33-18-201 and 33-18-242, MCA; and providing an applicability
8 date."

9
10 Be it enacted by the Legislature of the State of Montana:

11
12 **Section 1.** Section 33-18-201, MCA, is amended to read:

13 **"33-18-201. Unfair claim settlement practices prohibited.**

14 (1) No person may, with such frequency as to indicate a general
15 business practice, do any of the following:

16 ~~(1)~~(a) misrepresent pertinent facts or insurance policy
17 provisions relating to coverages at issue;

18 ~~(2)~~(b) fail to acknowledge and act reasonably promptly upon
19 communications with respect to claims arising under insurance
20 policies;

21 ~~(3)~~(c) fail to adopt and implement reasonable standards for
22 the prompt investigation of claims arising under insurance
23 policies;

Unofficial Draft Copy

As of: November 30, 2004 (8:27am)

LC5002

1 ~~(4)~~(d) subject to subsection (2), refuse to pay claims
2 without conducting a reasonable investigation based upon all
3 available information;

4 ~~(5)~~(e) fail to affirm or deny coverage of claims within a
5 reasonable time after proof of loss statements have been
6 completed;

7 ~~(6)~~(f) neglect to attempt in good faith to effectuate
8 prompt, fair, and equitable settlements of claims in which
9 liability has become reasonably clear;

10 ~~(7)~~(g) compel insureds to institute litigation to recover
11 amounts due under an insurance policy by offering substantially
12 less than the amounts ultimately recovered in actions brought by
13 such insureds;

14 ~~(8)~~(h) attempt to settle a claim for less than the amount
15 to which a reasonable ~~man~~ person would have believed ~~he~~ the
16 person was entitled by reference to written or printed
17 advertising material accompanying or made part of an application;

18 ~~(9)~~(i) attempt to settle claims on the basis of an
19 application which was altered without notice to or knowledge or
20 consent of the insured;

21 ~~(10)~~(j) make claims payments to insureds or beneficiaries
22 not accompanied by statements setting forth the coverage under
23 which the payments are being made;

24 ~~(11)~~(k) make known to insureds or claimants a policy of
25 appealing from arbitration awards in favor of insureds or
26 claimants for the purpose of compelling them to accept
27 settlements or compromises less than the amount awarded in

Unofficial Draft Copy

As of: November 30, 2004 (8:27am)

LC5002

arbitration;

~~(12)~~(1) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, when both of which submissions contain substantially the same information;

~~(13)~~(m) subject to subsection (2), fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

~~(14)~~(n) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(2) An insurer of medical malpractice liability need not pay and may not be ordered by a court to pay any type of damages, including but not limited to medical expenses and lost wages, prior to a final settlement or a judgment when the insurer's liability for the act or omission and liability for the damages are reasonably clear."

{ Internal References to 33-18-201: x

7-34-103	27-1-220	33-1-102	33-18-232
33-18-232	33-18-242	33-18-242	33-18-242
33-28-207	}		

Section 2. Section 33-18-242, MCA, is amended to read:

"33-18-242. Independent cause of action -- burden of proof.

Unofficial Draft Copy

As of: November 30, 2004 (8:27am)

LC5002

1 (1) An insured or a third-party claimant has an independent cause
2 of action against an insurer for actual damages caused by the
3 insurer's violation of subsection ~~(1), (4), (5), (6), (9), or~~
4 ~~(13)~~ (1) (a), (1) (d), (1) (e), (1) (f), (1) (i), or (1) (m) of
5 33-18-201.

6 (2) In an action under this section, a plaintiff is not
7 required to prove that the violations were of such frequency as
8 to indicate a general business practice.

9 (3) An insured who has suffered damages as a result of the
10 handling of an insurance claim may bring an action against the
11 insurer for breach of the insurance contract, for fraud, or
12 pursuant to this section, but not under any other theory or cause
13 of action. An insured may not bring an action for bad faith in
14 connection with the handling of an insurance claim.

15 (4) In an action under this section, the court or jury may
16 award such damages as were proximately caused by the violation of
17 subsection ~~(1), (4), (5), (6), (9), or (13)~~ (1) (a), (1) (d),
18 (1) (e), (1) (f), (1) (i), or (1) (m) of 33-18-201. Exemplary damages
19 may also be assessed in accordance with 27-1-221.

20 (5) An insurer may not be held liable under this section if
21 the insurer had a reasonable basis in law or in fact for
22 contesting the claim or the amount of the claim, whichever is in
23 issue.

24 (6) (a) An insured may file an action under this section,
25 together with any other cause of action the insured has against
26 the insurer. Actions may be bifurcated for trial where justice so
27 requires.

Unofficial Draft Copy

As of: November 30, 2004 (8:27am)

LC5002

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

(7) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

(8) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

{ Internal References to 33-18-242: x
7-34-103 33-1-102 33-1-1205 33-18-232
33-18-232 33-28-207 33-35-306 }

NEW SECTION. **Section 3. Applicability.** [This act] applies to medical malpractice claims that arise after [the effective date of this act].

- END -

{ Name : John MacMaster
Title : Staff Attorney
Agency : Legislative Services Division
Phone : 406/444-3064
E-Mail : jmacmaster@mt.gov }